

DEPARTMENT OF PUBLIC HEALTH  
AND HUMAN SERVICES

CHAPTER 49

IV-E FOSTER CARE SERVICES

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## Subchapter 1

## General Requirements

37.49.101 IV-E FOSTER CARE ELIGIBILITY: DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Child" means a person who is under age 18 or who is age 18 or older if the person is a full-time student in a secondary school who is reasonably expected to obtain a secondary school diploma or its equivalent in or before the month of the person's 19th birthday.

(2) "Child care institution" means a private institution, or public institution which accommodates no more than 25 children, which is licensed or approved by the state to provide care for children who have been removed from the home of the children's parents or guardians by a voluntary agreement or by court order. The term does not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children determined to be delinquent.

(3) "Child support rights" means a child's legal entitlement to cash assistance from a parent with whom the child does not live.

(4) "Department" means the department of public health and human services.

(5) "Dependent child" means a child as defined in this rule who is deprived of parental support or care due to any of the causes set forth in ARM 37.49.113, lives with a specified relative as provided in ARM 37.49.112 and lacks income and resources sufficient for the child's needs according to the assistance standards and resource limits set forth in ARM 37.49.407 and 37.49.501.

(6) "Earned income" means income information acquired by researching the data in the automated eligibility system maintained by the department, the automated wage and labor data base maintained by the Montana department of labor and industry and the automated income tax data base maintained by the Montana department of revenue. Income information may also be obtained from the child or parents.

(7) "TANF cash assistance" means assistance in the form of monthly cash payments provided to eligible families.

(8) "Filing unit" means the child for whom IV-E eligibility is being sought and the persons with whom the child lives whose income and resources are considered in determining the child's eligibility.

(9) "Foster home" means a home licensed by the state to provide care for a child or children who have been removed from the home of the child or children's parents or guardians by voluntary agreement or by court order.

(10) "IV-E foster care maintenance payments" means monthly cash payments made on behalf of a IV-E eligible child to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child and reasonable travel for a child's visitation with family or other caretakers. Local travel associated with providing the items listed above is also an allowable expense. In the case of child care institutions, such term must include the reasonable costs of administration and operation of such institutions as are necessarily required to provide the items described above.

(11) "Gross monthly income" means all earned and unearned income received in the month being considered, except for income excluded under ARM 37.49.412 and 37.49.414. In stepparent household cases as described in ARM 37.49.201, gross monthly income includes any income of the stepparent deemed available to the spouse as unearned income as provided in ARM 37.49.406.



(12) "Kinship foster care" means a youth care facility in which substitute care is provided to one to six children or youth other than the kinship parent's own children, stepchildren or wards. The substitute care may be provided by any of the following:

- (a) a member of the child's extended family;
- (b) a member of the child's or family's tribe;
- (c) the child's godparents;
- (d) the child's stepparents; or
- (e) a person to whom the child, child's parents or family ascribe a family relationship and with whom the child has had a significant emotional tie that existed prior to the department's involvement with the child or family.

(13) "Married" means that a legally recognized marital relationship exists between two persons, regardless of whether the marriage was created ceremonially or by common law.

(14) "Medical support rights" means a child's legal entitlement to health insurance coverage and/or assistance in paying medical expenses from a parent with whom the child does not live.

(15) "Minor parent" means a person under the age of 18 who is the biological or adoptive parent of a dependent child who is in the care of the minor parent.

(16) "Month of eligibility" means the month in which either:

- (a) the child's parent or legal guardian entered into a voluntary placement agreement in regard to the child; or
- (b) the petition was filed which resulted in a judicial determination to the effect that it would be contrary to the welfare of the child to remain in the home and that reasonable efforts have been made to prevent or eliminate the need to remove the child from the home.

(17) "Net monthly income" means gross monthly income less any earned or unearned income excluded pursuant to ARM 37.49.412 and 37.49.414 and less any earned income disregarded in ARM 37.49.413.

(18) "Placing worker" means an individual who has the authority and responsibility to make decisions regarding the placement of a child who has been removed from the child's home by a voluntary agreement entered into by the child's parent or legal guardian or as a result of a judicial determination that removal from the home will serve the child's welfare. A placing worker may be an employee or agent of a governmental unit or other public agency who has a IV-E agreement with child and family services division.

(19) "Substitute care" means full-time care of a youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or who are without the care and supervision of their parents or guardian.

(20) "Unearned income" means all income that is not earned income as defined in this rule and includes but is not limited to social security benefits, veteran's benefits or payments, worker's compensation payments, unemployment compensation payments, child support payments and dividends paid on capital investments.

(21) "Youth care facility" means a facility that is licensed by the department or by the appropriate licensing authority in another state and in which facility substitute care is provided to youth. The term includes youth foster homes, kinship foster homes, youth group homes, youth shelter care facilities, child care agencies, transitional living programs and youth assessment centers. Youth care facilities must meet the definition of a child care institution in order to receive IV-E foster care maintenance payments. (History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-2-201 and 53-6-131, MCA; NEW, 1999 MAR p. 1514, Eff. 7/2/99; AMD, 2003 MAR p. 1196, Eff. 6/13/03.)

37.49.102 IV-E FOSTER CARE ELIGIBILITY: GENERAL REQUIREMENTS (1) IV-E eligibility for a child who has been placed in substitute care shall be determined based on circumstances in the month of eligibility as defined in ARM 37.49.101.

(2) A child shall be determined IV-E eligible if:

(a) the child was placed in substitute care:

(i) pursuant to a voluntary placement agreement entered into by the child's parent or legal guardian; or

(ii) by an order issued by a court of competent jurisdiction pursuant to the provisions of Title 41, chapter 3, MCA;

(b) the state or tribe has legal responsibility for the child's care and placement in accordance with the requirements of the Title IV-E agreement between the tribe and the state;

(c) the child:

(i) meets the requirements for IV-E eligibility as specified in ARM 37.49.101 through 37.49.502 in the month of eligibility; or

(ii) was living in the home of the legal custodial specified relative as provided in ARM 37.49.112 during any month in the six months immediately prior to the month of eligibility and would have met the requirements for IV-E eligibility as specified in ARM 37.49.101 through 37.49.502 during said month; and

(d) meets all other eligibility requirements of ARM 37.49.101 through ARM 37.49.502.

(3) If a child is determined to be IV-E eligible, eligibility continues as long as the child remains in state custody or jurisdiction until age 18, regardless of subsequent changes in the filing unit's income or resources. However, IV-E funds cannot be used for maintenance payments when:

(a) deprivation of parental support as defined in ARM 37.49.113 no longer exists; or

(b) the child is age 18 unless the child is a full-time student in a secondary school who is reasonably expected to obtain a secondary school diploma or its equivalent in or before the month of the child's 19th birthday.

(c) a judicial determination that:

(i) reasonable efforts to finalize the permanency plan have not been made within 12 months from the time the court determined that the child was subjected to abuse or neglect; or

(ii) 12 months after the first 60 days of the removal from the home, whichever comes first; or

(iii) from the time of the last permanency plan hearing or within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary;

(d) the child is not placed in a IV-E eligible and licensed foster care placement; or

(e) the child's income and/or resources exceed the limits specified in ARM 37.49.407 and 37.49.501.

(4) A child who is IV-E eligible and who meets the requirements of (3) may receive benefits consisting of:

(a) IV-E foster care medicaid coverage; and

(b) IV-E foster care maintenance payments. (History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-2-201 and 53-6-131, MCA; NEW, 1999 MAR p. 1514, Eff. 7/2/99; AMD, 2003 MAR p. 1196, Eff. 6/13/03.)

Rules 03 through 05 reserved

37.49.106 IV-E FOSTER CARE ELIGIBILITY: RESIDENCY (1) In order for a child to be IV-E eligible, the parent or parents of the child must be residents of the state of Montana in the month of eligibility. There is no durational residency requirement for the child's parent or parents.

(2) After a child is determined to be IV-E eligible, eligibility shall not be lost due to a change in residence of the child and/or the child's parents, and the state of Montana shall pay the IV-E foster care maintenance payments for the child as long as the child is eligible for benefits. However, if the child is living or physically located in a state other than Montana after the month of eligibility, the state which shall be responsible for providing medicaid coverage for the child shall be determined in accordance with the residency provisions of 42 CFR 435.403, as amended through October 1, 1997, which are hereby adopted and incorporated by reference. A copy of this regulation may be obtained from the Department of Public Health and Human Services, Office of Legal Affairs, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210. (History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-2-201 and 53-6-131, MCA; NEW, 1999 MAR p. 1514, Eff. 7/2/99.)

37.49.107 IV-E FOSTER CARE ELIGIBILITY: CITIZENSHIP

(1) As a condition of IV-E eligibility and to receive IV-E maintenance payments and/or medicaid, a child must be either a citizen of the United States, a person born in Samoa who is not a U.S. citizen, or a qualified alien as defined in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, section 431(b)(1) through (6). (History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-2-201 and 53-6-131, MCA; NEW, 1999 MAR p. 1514, Eff. 7/2/99.)

37.49.108 IV-E FOSTER CARE ELIGIBILITY: AGE (1) As a condition of IV-E eligibility, a child must be:

(a) under the age of 18; or

(b) age 18 or older if the child is a full-time student in a secondary school who is reasonably expected to obtain a secondary school diploma or its equivalent in or before the month of the child's 19th birthday. (History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-2-201 and 53-6-131, MCA; NEW, 1999 MAR p. 1514, Eff. 7/2/99; AMD, 2003 MAR p. 1196, Eff. 6/13/03.)

Rules 09 through 11 reserved

37.49.112 IV-E FOSTER CARE ELIGIBILITY: LIVING WITH A SPECIFIED RELATIVE (1) As a condition of IV-E eligibility, a child who is removed from the custody of a parent or other relative must have been living with any relative who is related by blood, including half blood, or by marriage or adoption, and who is within the fifth degree of kinship to the child. At some time during the six months immediately prior to the month of eligibility, the child must have lived with the relative in a place of residence maintained as the relative's home.

(2) The specified relative with whom the child resided during the six months prior to the month of eligibility must be the child's parent, grandparent, great grandparent, great-great grandparent, great-great-great grandparent, sibling, uncle, aunt, great uncle, great aunt, great-great uncle, great-great aunt, first cousin, first cousin once removed, nephew, or niece. Steprelatives of the same degree of kinship are also considered to be within the required degree of kinship; for example, stepparent, stepgrandparent or stepsibling.

(3) A spouse of any of the relatives named in (1) or (2) is considered to be within the required degree of kinship, even after the marriage has been terminated by death or divorce.

(4) The child must be placed in foster care after being removed from the legal custody of a parent or other legal custodian. Removal may occur under the terms of an agreement providing for foster care placement signed by a person with legal custody of the child or as a result of a petition filed by the department, a tribe, another state agency or a licensed child placing agency seeking to declare the child a youth in need of care. (History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-2-201 and 53-6-131, MCA; NEW, 1999 MAR p. 1514, Eff. 7/2/99; AMD, 2003 MAR p. 1196, Eff. 6/13/03; AMD, 2004 MAR p. 2292, Eff. 9/24/04.)

37.49.113 IV-E ELIGIBILITY: DEPRIVATION OF PARENTAL SUPPORT (1) As a condition of IV-E eligibility, a child must be deprived of parental support in the month of eligibility due to:

- (a) death of a parent or parents;
- (b) continued absence of a parent or parents;
- (c) physical or mental incapacity of a parent or parents; or
- (d) unemployment of parent.

(2) A child is considered to be deprived of parental support due to the continued absence of a parent if the nature and duration of the absence is such as to either interrupt or terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child.

(a) A parent who is absent solely due to the performance of active duty in the armed services of the United States as defined in 37 USC 101(3) is not considered to be absent.

(3) A child is considered to be deprived of parent support due to physical or mental incapacity if:

- (a) the parent has a physical or mental defect, illness, or impairment which has been established through competent medical evidence;
- (b) the incapacity is of such a debilitating nature as to reduce substantially or eliminate the parent's ability to support or care for the child; and
- (c) the incapacity is expected to last at least 30 days.

(4) A child is considered to be deprived of parental support due to unemployment of the primary wage earner if the family's income does not exceed the income standards provided in ARM 37.49.407 for a family of that size. (History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-2-201 and 53-6-131, MCA; NEW, 1999 MAR p. 1514, Eff. 7/2/99.)



## Subchapter 2

## Household Eligibility

37.49.201 IV-E FOSTER CARE ELIGIBILITY: STEPPARENT HOUSEHOLDS (1) A stepparent household is one in which a parent who lives with the child or children for whom a IV-E eligibility determination is being made or sought is married to and living with a person who is not the natural or adoptive parent of at least one of the children for whom IV-E eligibility is being determined. (History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-2-201 and 53-6-131, MCA; NEW, 1999 MAR p. 1514, Eff. 7/2/99.)

Rules 02 and 03 reserved

37.49.204 IV-E FOSTER CARE ELIGIBILITY: INCLUSION IN THE FILING UNIT (1) The child's IV-E eligibility is based on the total countable income and resources of all members of the filing unit in the month of eligibility.

(2) Except as provided in (3) below, the following individuals must be included in the child's filing unit:

- (a) the child for whom IV-E eligibility is being determined;
- (b) any natural or adoptive parent of the child with whom the child was living in that month; and
- (c) any blood-related or adoptive brother or sister of the child with whom the child was living in that month, including half brothers or sisters.

(3) The following individuals are not included in the child's filing unit:

- (a) individuals who are receiving supplemental security income (SSI) benefits;
- (b) stepsiblings; and
- (c) siblings over 19 years of age. (History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-2-201 and 53-6-131, MCA; NEW, 1999 MAR p. 1514, Eff. 7/2/99.)

## Subchapter 3

## Child Support Eligibility Requirements

37.49.301 CHILD AND MEDICAL SUPPORT REQUIREMENTS

(1) Except as provided in (2), in every case where a child is receiving IV-E foster care maintenance payments and/or medicaid benefits based on the absence of a parent from the home, the child's specified caretaker relative must:

(a) assign child and/or medical support rights to the department; and

(b) cooperate in establishing paternity and obtaining child and/or medical support.

(2) A specified caretaker relative is not required to cooperate in establishing paternity and obtaining child and/or medical support if good cause for refusing to do so is determined to exist in accordance with the provisions of 45 CFR 232.40 through 232.49, as amended through October 1, 1995. The department hereby adopts and incorporates by reference 45 CFR 232.40 through 232.49, as amended through October 1, 1995, pertaining to good cause for refusal to cooperate. Copies of 45 CFR 232.40 through 232.49, as amended through October 1, 1995, may be obtained from the Department of Public Health and Human Services, Office of Legal Affairs, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

(3) In addition to requiring assignment of rights and cooperation as provided in (1), the department may seek an order requiring the payment of child and/or medical support for the child receiving IV-E foster care benefits by either or both of the child's parents.

(4) A child who is otherwise IV-E eligible will not be denied eligibility because of the failure or refusal of the placing worker, child's parent, or specified caretaker relative to comply with the requirements of (1)(a) or (1)(b) of this rule. (History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-2-201, 53-2-613 and 53-6-131, MCA; NEW, 1999 MAR p. 1514, Eff. 7/2/99.)

## Subchapter 4

## Income

37.49.401 IV-E ELIGIBILITY: A CONDITION OF NEED MUST EXIST (1) A child is not IV-E eligible unless the requirements in ARM 37.49.102 are met.

(2) After the initial determination of IV-E financial eligibility, the child is not eligible for IV-E benefits as specified in ARM 37.49.102(4)(a) and (b) unless:

(a) deprivation of parental support as defined in ARM 37.49.113 exists, and:

(i) the child is under 18 years of age; or

(ii) the youth is age 18 or a full-time student in a secondary school and is reasonably expected to obtain a secondary school diploma or its equivalent in or before the month of the child's 19th birthday; and

(b) a judicial determination that:

(i) reasonable efforts to finalize the permanency plan have been made within 12 months from the time the court determined that the child was subjected to abuse or neglect; or

(ii) 12 months after the first 60 days of the removal from the home, whichever comes first; or

(iii) from the time of the last permanency plan hearing, or within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary;

(c) the child is placed in a IV-E eligible and licensed foster care placement; and

(d) the child has income and resources equal to or less than the applicable income and resource standards established in ARM 37.49.407 and 37.49.501. (History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-2-201, 53-2-613 and 53-6-131, MCA; NEW, 1999 MAR p. 1514, Eff. 7/2/99; AMD, 2003 MAR p. 1196, Eff. 6/13/03.)

Rules 02 and 03 reserved

37.49.404 IV-E FOSTER CARE ELIGIBILITY: INCOME

(1) Income standards as set forth in ARM 37.49.407 are used to determine whether a child or children is IV-E eligible based on income. Two sets of income standards are used. They are as follows:

(a) the gross monthly income (GMI) standards, which specify the maximum level of gross monthly income a filing unit with a particular number of members may have to be IV-E eligible; and

(b) the net monthly income (NMI) standards, which specify the maximum level of net monthly income a filing unit with a particular number of members may have to be IV-E eligible.

(2) To determine the IV-E eligibility of a child or children, the filing unit's gross monthly income as defined in ARM 37.49.101 is compared to the applicable GMI standard, and, after specified exclusions and disregards specified in ARM 37.49.412, 37.49.413, and 37.49.414 are applied, it is compared to the applicable NMI standard. If the filing unit's gross monthly income exceeds the GMI standard or the filing unit's net monthly income exceeds the NMI standard, the child or children are not IV-E eligible.

(3) The GMI and NMI standards which are used for each comparison are chosen based on the number of the persons in the filing unit and whether the filing unit has a shelter obligation.

(a) A filing unit is considered to have a shelter obligation if a member of the filing unit is obligated to meet a portion of the shelter expenses of the filing unit's place of residence, such as rent, a payment under a contract to purchase a house or other place of residence, a mortgage payment, real property taxes, home owner's insurance, mobile home lot rent, or utilities such as heating fuel, water, or lights. A filing unit receiving a government rent or housing subsidy is considered to have a shelter obligation even if the filing unit's share of the rent or housing payment is \$0.

(4) Income received or reasonably expected to be received in the month of eligibility is compared to the applicable GMI and NMI standards. (History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-2-201 and 53-6-131, MCA; NEW, 1999 MAR p. 1514, Eff. 7/2/99.)

37.49.405 IV-E FOSTER CARE ELIGIBILITY: TREATMENT OF INCOME (1) All available income of any required member of the filing unit is counted in determining IV-E eligibility, unless a specific provision elsewhere in this chapter provides that the income will be excluded, disregarded, or otherwise not counted.

(2) Income averaging may be used to determine monthly income if:

(a) income information is obtained for an annual or quarterly period of time. In such cases, the monthly income is calculated by dividing the total amount of income by the number of months the payment or payments are intended to cover; or

(b) income fluctuates significantly from month to month. An example would be an employee paid an hourly wage whose hours worked vary from month to month.

(3) Income tax refunds are not considered as either earned or unearned income but are considered a resource to the filing unit. (History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-2-201 and 53-6-131, MCA; NEW, 1999 MAR p. 1514, Eff. 7/2/99; AMD, 2003 MAR p. 1196, Eff. 6/13/03.)

37.49.406 IV-E ELIGIBILITY: DEEMING OF INCOME (1) The income of certain individuals who live with the filing unit but are not members of the filing unit is considered in determining IV-E eligibility. The income of such individuals is considered by means of a procedure known as "deeming" which is described in (3).

(2) The income of the following individuals is deemed to be available to the filing unit:

(a) a stepparent, i.e., a person who is not the natural or adoptive parent of any child in the filing unit but is married to the parent of a child in the filing unit;

(b) a sponsor of an alien for the three years immediately following the alien's entry into the United States; and

(c) a parent of a minor parent if the minor parent's child is the child placed in substitute care.

(3) The following amounts are subtracted from the income of individuals whose income is required to be deemed, and the net amount obtained is counted as unearned income available to the filing unit, regardless of whether that amount is actually made available to the filing unit for its support and maintenance:

(a) a standard work expense of \$90 is subtracted from the individual's earned income, if any;

(b) an amount of earned income, unearned income, or a combination of both which is equal to the net monthly income standard for a family consisting of the individual whose income is deemed and all persons who live with the individual and qualify as the individual's dependents for federal income tax purposes but are not included in the filing unit;

(c) actual verified amounts paid by the individual to persons who do not live with the individual but who qualify as dependents of the individual for federal income tax purposes; and

(d) actual verified amounts of alimony or child support paid by the individual to persons not living with the individual.  
(History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-2-201 and 53-6-131, MCA, NEW, 1999 MAR p. 1514, Eff. 7/2/99; AMD, 2003 MAR p. 1196, Eff. 6/13/03.)

37.49.407 IV-E FOSTER CARE ELIGIBILITY: TABLES OF INCOME STANDARDS (1) The following income standards will be used as provided in ARM 37.49.404 to determine IV-E eligibility:

(a)

GROSS MONTHLY INCOME STANDARDS

<u>Number of Persons in Household</u>	<u>With Shelter Obligation Per Month</u>	<u>Without Shelter Obligation Per Month</u>
1	\$ 616	\$ 224
2	823	361
3	1,032	496
4	1,241	629
5	1,449	751
6	1,658	868
7	1,867	984
8	2,074	1,093
9	2,176	1,195
10	2,276	1,295
11	2,364	1,382
12	2,451	1,469
13	2,529	1,547
14	2,601	1,621
15	2,673	1,693
16	2,736	1,756



(b)

NET MONTHLY INCOME STANDARDS

<u>Number of Persons in Household</u>	<u>With Shelter Obligation Per Month</u>	<u>Without Shelter Obligation Per Month</u>
1	\$ 333	\$ 121
2	445	195
3	558	268
4	671	340
5	783	406
6	896	469
7	1,009	532
8	1,121	591
9	1,176	646
10	1,230	700
11	1,278	747
12	1,325	794
13	1,367	836
14	1,406	876
15	1,445	915
16	1,479	949

(History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-2-201 and 53-6-131, MCA; NEW, 1999 MAR p. 1514, Eff. 7/2/99.)

Rules 08 through 11 reserved

37.49.412 IV-E FOSTER CARE ELIGIBILITY: EXCLUDED EARNED INCOME

(1) The following earned income is not counted when comparing the filing unit's gross monthly income to the applicable GMI standard:

(a) the earned income of a dependent child who is a full-time student;

(b) income received by a dependent child under section 503 of the Job Training Partnership Act (JTPA) of 1982, P.L. 97-300; and

(c) earned income tax credit (EITC) advance payments and refunds.

(2) The following earned income is not counted when comparing the filing unit's net monthly income to the applicable NMI standard:

(a) the earned income of a dependent child who is a full-time student; and

(b) EITC advance payments and refunds.

(3) Income tax refunds are not considered as either earned or unearned income but are considered a resource to the filing unit.

(History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-2-201 and 53-6-131, MCA; NEW, 1999 MAR p. 2574, Eff. 7/2/99; AMD, 2003 MAR p. 1196, Eff. 6/13/03.)

37.49.413 IV-E FOSTER CARE ELIGIBILITY: EARNED INCOME DISREGARDS (1) To determine the net monthly income which will be compared to the applicable NMI standard, the disregards set forth in (2)(a) and (b) below are subtracted from the total gross earned income of each member of the filing unit after the exclusions provided in ARM 37.49.412 have been applied.

(2) The following disregards will be applied in the order listed:

(a) a standard work expense disregard of \$90 for each member of the filing unit who has earned income; and

(b) \$30 plus 1/3 of the balance of earned income for each member of the filing unit who has earned income; and

(c) a dependent care disregard for payments made by a member of the filing unit for the care of a dependent child or incapacitated adult living in the same home as the filing unit, provided that:

(i) the amount disregarded may not exceed \$175 per month per person for persons 2 years of age or older or \$200 per month per child for children younger than 2 years of age;

(ii) the disregard applies only to payments for care during the time when the employed member of the filing unit is at the place of employment or en route between the place of employment and the site of the dependent care; and

(iii) only amounts paid or due for the month for which eligibility is being determined may be disregarded. (History: Sec. 52-2-111, 53-2-201 and 53-6-113, MCA; IMP, Sec. 52-2-115, 53-2-201 and 53-6-131, MCA; NEW, 1999 MAR p. 1514, Eff. 7/2/99; AMD, 2000 MAR p. 3545, Eff. 12/22/00.)

37.49.414 IV-E FOSTER CARE ELIGIBILITY: EXCLUDED UNEARNED INCOME (1) The following unearned income is not counted when comparing the filing unit's gross monthly income and net monthly income to the applicable GMI and NMI standards:

(a) complementary assistance from other agencies and organizations which consists of:

(i) goods and services not intended to be covered by the TANF cash assistance grant; or

(ii) a supplement to TANF cash assistance payments for a different purpose;

(b) agent orange settlement payments;

(c) undergraduate student loans and grants for educational purposes such as Pell grants, supplemental educational opportunity grants, state student incentive grants, college work study, BIA assistance, veterans financial assistance or university year for action (UYA);

(d) low income energy assistance payments (LIEAP);

(e) the value of the food stamp coupon allotment;

(f) the value of U.S. department of agriculture donated foods;

(g) any benefits received under Title VII of the nutrition program for the elderly of the Older Americans Act of 1965 as amended;

(h) the value of supplemental food assistance received under the Child Nutrition Act of 1966 and the special food services program for children under the National School Lunch Act, P.L. 92-433 and P.L. 93-150;

(i) all monies awarded to Indian tribes by the Indian claims commission or court of claims as authorized by P.L. 92-254, 93-134, 94-114, and 94-540;

(j) payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(k) any contribution made by relatives or others on behalf of the filing unit which is not directly available to the filing unit;

(l) the tax exempt portions of payments made pursuant to the Alaska Native Claims Settlement Act, P.L. 92-203;

(m) all payments under Title I of the Elementary and Secondary Education Act;

(n) incentive payments or reimbursement of training related expenses made to participants in the work component of the TANF program;

(o) payments for supportive services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the service corps of the retired executives and active corps of executives and any other program under Titles II and III of P.L. 93-113;

(p) payments to individual volunteers in service to America (VISTA) volunteers under Title I of P.L. 93-113, pursuant to section 404(g) of that law;

(q) small nonrecurring gifts such as those for Christmas, birthdays, and graduation, up to \$30 per member of the filing unit in any period of three consecutive calendar months; and

(r) monetary allowances for certain children of Vietnam veterans as described in Administration for Children and Families (ACF) issuance IM-03-02 dated May 8, 2003.

(2) Income tax refunds are not considered as either earned or unearned income but are considered a resource to the filing unit. (History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-2-201 and 53-6-131, MCA; NEW, 1999 MAR p. 1514, Eff. 7/2/99; AMD, 2003 MAR p. 1196, Eff. 6/13/03.)

## Subchapter 5

## Resources

37.49.501 IV-E FOSTER CARE ELIGIBILITY: RESOURCE LIMITATION (1)

A child is not IV-E eligible if the equity value of combined countable resources of all members of the filing unit exceeds \$10,000 in the month of eligibility.

(2) After the initial determination of eligibility, the child is not eligible for IV-E benefits as specified in ARM 37.49.102(4)(a) and (b) if the equity value of the child's countable resources exceeds \$10,000.

(3) All real and personal property is counted in determining eligibility if any member of the filing unit has the legal right or actual ability to liquidate the property or the member's interest in the property for cash, unless it is a resource specifically excluded in ARM 37.49.502. (History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-2-201 and 53-6-131, MCA; NEW, 1999 MAR p. 1514, Eff. 7/2/99; AMD, 2000 MAR p. 3545, Eff. 12/22/00.)

37.49.502 IV-E FOSTER CARE ELIGIBILITY: EXCLUDED RESOURCES (1)

The following resources are not counted when determining IV-E eligibility:

- (a) the home which is the usual residence of the filing unit;
- (b) one motor vehicle which has an equity value of \$1,500 or less. Any equity value in excess of \$1,500 for the first vehicle and the entire equity value of any additional vehicle or vehicles is counted in determining eligibility;
- (c) household furniture and goods, clothing and other personal effects, equipment or other items necessary to produce food, home produce for family use and consumption only, and other items of limited value essential for day-to-day use;
- (d) tools and equipment essential for the self-employment of a member of the filing unit;
- (e) one burial plot for each member of the filing unit;

(f) funds designated for the funeral, burial, and/or cremation expenses of members of the filing unit as follows:

(i) for each member of the filing unit, a sum of \$1,500 or less designated for such expenses under an irrevocable agreement; or

(ii) for each member of the filing unit, an unlimited sum designated for such expenses under an irrevocable agreement;

(g) real property other than the usual residence of the filing unit, for a maximum of 6 months, if the family is making a good faith effort to sell the property;

(h) agent orange settlement payments;

(i) radiation exposure compensation payments;

(j) Maine Indian Claims Settlement Act of 1980 payments;

(k) restitution paid pursuant to the Civil Liberties Act of 1988 to individuals of Japanese ancestry who were interned and Aleuts who were relocated during world war II;

(l) major disaster and emergency assistance payments received pursuant to the Disaster Relief and Emergency Assistance Amendments of 1988;

(m) all funds in a business asset development account (BADA), provided that if the business fails and any funds from the account are disbursed to a member of the filing unit, those funds shall be counted as a resource in the month they are disbursed and in each subsequent month until the funds are spent down;

(n) cash benefits paid under a fire or casualty insurance policy for 90 days after the date of receipt;

(o) the face value of any life insurance owned by any member of the filing unit, but not the cash value of such insurance;

(p) any funds in an escrow account established for a member of the filing unit who is participating in the housing and urban development (HUD) family self-sufficiency (FSS) program;

(q) settlement proceeds paid to a member of the filing unit in the factor VIII or IX concentrate blood products class action lawsuit, MDL 986, No. 93-C-7452, northern district of Illinois;

(r) funds in a family health account (FHA);

(s) any unspent portion of an earned income tax credit (EITC) advance payment or refund, in the first month after the month in which it is received; pursuant to ARM 37.49.412, EITC payments and refunds are excluded as earned income in the month of receipt;

(t) student financial assistance made for attendance costs under Title IV of the Higher Education Act or bureau of Indian affairs student assistance programs under the Higher Education Technical Amendments Act of 1987; and

(u) a loan which a member of the filing unit receives and has a legal obligation to repay pursuant to a written agreement signed by the member. (History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-2-201 and 53-6-131, MCA; NEW, 1999 MAR p. 2286, Eff. 7/2/99.)



## Subchapter 6

## Eligibility Determinations

37.49.601 IV-E FOSTER CARE ELIGIBILITY: PLACE OF APPLICATION (1) Application for IV-E eligibility must be submitted to the office of public assistance in the county of residence of the specified caretaker relative with whom the child lived immediately prior to being placed in foster care. (History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-2-201 and 53-6-131, MCA; NEW, 1999 MAR p. 1514, Eff. 7/2/99.)

37.49.602 IV-E FOSTER CARE ELIGIBILITY: PERIODIC REDETERMINATIONS OF ELIGIBILITY (1) After the initial determination of IV-E eligibility, the child's IV-E eligibility and eligibility for benefits as specified in ARM 37.49.102(4)(a) and (b) shall be investigated and redetermined every 6 months. (History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-2-201 and 53-6-131, MCA; NEW, 1999 MAR p. 1514, Eff. 7/2/99.)

Rules 03 through 05 reserved

37.49.606 IV-E FOSTER CARE ELIGIBILITY: SAFEGUARDING AND SHARING INFORMATION (1) Use and disclosure of information concerning applicants for or recipients of IV-E eligibility are restricted to purposes directly connected with the administration of the IV-E program, except as provided in 42 USC 671(a)(8) and (9), as amended through July 16, 1996, which governs use and disclosure of information in the IV-E foster care program. The department hereby adopts and incorporates by reference 42 USC 671(a)(8) and (9) as amended through July 16, 1996. A copy of 42 USC 671(a)(8) and (9) as amended through July 16, 1996, may be obtained from the Department of Public Health and Human Services, Office of Legal Affairs, 111 North Sanders Street, P.O. Box 4210, Helena, MT 59604-4210. (History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-2-201 and 53-6-131, MCA; NEW, 1999 MAR p. 1514, Eff. 7/2/99.)

## Subchapter 7

## Termination and Hearing Rights

37.49.701 IV-E FOSTER CARE ELIGIBILITY: GROUNDS FOR TERMINATION OF BENEFITS; NOTICE OF TERMINATION (1) If a child is determined to be IV-E eligible, eligibility continues as long as the child remains in state or tribal custody or jurisdiction regardless of subsequent changes in the filing unit's income or resources. However, eligibility no longer exists when the child is age 18 unless the child is a full-time student in a secondary school who is reasonably expected to obtain a secondary school diploma or its equivalent in or before the month of their 19th birthday and is under the jurisdiction of a tribe whose code allows for foster care past the age of 18.

(2) When a child becomes ineligible for IV-E benefits, a written notice must be sent to the placing worker at least 10 days prior to the date on which the benefits will terminate, except as provided in (3)(a) through (c)(ii). The notice must state that the benefits are being terminated, the reason for the termination, and the date on which the benefits will terminate. The notice must also contain information about the right to a fair hearing and to contact the department prior to the effective date of termination to discuss any disagreement or misunderstanding regarding eligibility.

(3) The department is not required to send notice 10 days prior to the date of termination but must send notice not later than the date of termination if:

- (a) the department has information from a reliable source that the child has died;
- (b) the child's whereabouts are unknown; or
- (c) the placing worker has signed a written statement which:
  - (i) requests the termination of benefits for the child; or
  - (ii) contains information which indicates that the child is no longer eligible for benefits and also contains an acknowledgment that benefits for the child must be terminated as a result of that information. (History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-2-201 and 53-6-131, MCA; NEW, 1999 MAR p. 1514, Eff. 7/2/99; AMD, 2003 MAR p. 1196, Eff. 6/13/03.)

Rules 02 and 03 reserved

37.49.704 IV-E FOSTER CARE ELIGIBILITY: OPPORTUNITY FOR HEARING (1) The placing worker who does not agree with an adverse action of the department related to IV-E eligibility shall have the right to a hearing as provided in ARM 46.2.201 through 46.2.214. (History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-2-201 and 53-6-131, MCA; NEW, 1999 MAR p. 1514, Eff. 7/2/99.)